# CONFLICT OF LAWS AND THE ENFORCEMENT OF THE STATUTORY LIABILITY OF STOCKHOLDERS IN A FOREIGN CORPORATION.

IT is well settled that, without any express statutory enactment, one who subscribes to the capital stock of a corporation is liable to it for the par value of the shares for which he subscribes.[1] This obligation has been likened to a trust fund for the benefit of corporate creditors. They may enforce it even after the insolvency of the corporation.[2]

Many States, however, provide by statute for an additional liability on the part of the stockholders to the corporate creditors.[3] A familiar example of such statutory liability is that of stockholders in National Banks. Indeed this has frequently served as a model to the States. As with National Banks the liability is apt to be for a sum not greater than the par value of the stock. As with National Banks also the liability is secondary. The corporation, as such, is primarily liable for its own debts. It is only when the inability of the corporation to meet its debts is sufficiently shown (as by return of execution unsatisfied upon a judgment against the corporation) that the creditors may proceed against the stockholders individually.[4]

Since the liability is imposed by statute, the statute determines its nature and extent. Thus the time when the cause of action accrues,[5] the conditions upon which the liability may be enforced,[6] and the

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[1] Sanger *v.* Upton, 91 U. S. 56; Hawkins *v.* Glenn, 131 U. S. 319; Glenn *v.* Liggett, 135 U. S. 533; Glenn *v.* Marbury, 145 U. S. 499. But a corporation may, if the circumstances require it, *sell* its stock for less than par, and, if the sale be *bona fide*, the purchaser will not be liable for the difference between par and the purchase price. Handley *v.* Stutz, 139 U. S. 417; Clark *v.* Bever, 139 U. S. 96.

[2] See *ante*, note 1.

[3] For a list see Beale, Foreign Corporations, chap. xvii.

[4] Wilson *v.* Seligman, 144 U. S. 41; Hancock Nat. Bank *v.* Farnum, 176 U. S. 640; Middletown Bank *v.* Ry., 197 U. S. 394; Bernheimer *v.* Converse, 206 U. S. 516.

[5] Great Western Tel. Co. *v.* Purdy, 162 U. S. 329; Terry *v.* Anderson, 95 U. S. 628; Carrol *v.* Green, 92 U. S. 509.

[6] Pollard *v.* Bailey, 20 Wall. 520; Fourth Nat. Bank *v.* Francklyn, 120 U. S. 747; Middletown Ry. *v.* Bank, 197 U. S. 394.

persons to enforce it[1] are all determined by the statute as interpreted by the Court of last resort in the enacting State. The same is true as to the persons against whom the liability may be enforced. The statute imposes the liability on "stockholders." The persons who answer this description must obviously be ascertained with reference to the law of the State which created the corporation[2] — assuming, of course, a sufficient assent on their part to become stockholders. In other words substantive matters in respect to this liability must be tested by the law of the State which creates it.

In nature, nevertheless, this liability is a hybrid. It has both contractual and statutory features, and yet it is neither contractual nor statutory. It is incidental to membership in the corporation. It is imposed, irrespective of either knowledge or conscious assent, on all who become stockholders.[3] On the other hand, no person can be made a stockholder without his own consent. No one, therefore, becomes subject to this liability unless he voluntarily becomes a member of the corporation. This assent creates the contractual element of the liability, bringing it within the protection of the constitutional prohibition in regard to impairing the obligation of contracts. The State, therefore, may not increase the liability of existing stockholders.[4] But creditors contract with the corporation in reliance upon this additional security. They, also, may claim the protection of the constitutional provision. The State therefore cannot decrease the liability with respect to existing creditors.[4]

Yet the liability is not contractual. It lacks certain essential elements of contract. The stockholder assents to the statute, it is true, but there the likeness to a contract ends. In the first place the statute is not an offer; it imposes a liability as an incident of membership in the corporation. This burden, moreover, runs with the share of stock as a covenant runs with land. There is, however, no promisee. The stockholder does not contract, in respect of this liability, with the State for the benefit of creditors, with the corporation, or with

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[1] Hale *v.* Allinson, 188 U. S. 56; Finney *v.* Guy, 189 U. S. 335; Jacobson *v.* Allen, 12 Fed. 454; Runner *v.* Dwiggins, 147 Ind. 238.

[2] Penobscot R. R. *v.* Bartlett, 12 Gray (Mass.) 244; Electric Welding Co. *v.* Prince, 195 Mass. 242, 256; Glenn *v.* Liggett, 133 U. S. 533, 538. See Wharton, Conf. of Laws, p. 244.

[3] Howarth *v.* Lombard, 175 Mass. 570, 573-576; Bernheimer *v.* Converse, 206 U. S. 516, 529.

[4] Bernheimer *v.* Converse, 206 U. S. 516, 530.

the creditors themselves. He is, it is true, secondarily liable, according to the provisions of the statute, for the debts of the corporation. But he is not technically a surety.[1] Thus the corporation and the creditor may, without releasing him, extend by agreement the time for payment of the corporate obligation.[1] There is, in fact, no meeting of minds. The stockholder assents to the statute, either actually or constructively, by becoming a stockholder, and from this union of statute and assent the liability is born. This double nature of the liability has important effects when suit is brought on it in another State.

While the law of the creating State determines the extent of the liability, the law of the forum determines the extent of the remedy to be given in a suit thereon. Thus the law of the creating State determines when the cause of action accrues,[2] but the statute of limitations of the forum determines whether the action is barred.[3] The creating statute prescribes the conditions of enforcement;[4] the law of the forum determines whether the liability is enforceable.[5] The law of the creating State determines whether an exclusive statutory remedy has been coupled with the right;[6] the law of the forum determines whether that remedy can be given in the State in which action is brought.[7] The law of the creating State determines who is the proper party plaintiff;[8] the law of the forum determines whether the plaintiff is the proper party.[9] In a word the creating law determines what the liability is; the law of the forum determines what effect, if any, is to be given thereto.

A collateral question, which often arises in regard to enforcing the superadded liability in other States, well illustrates both branches of this rule. It frequently happens that such suits are brought by a receiver appointed in the State which created the liability. It is a

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[1] Boice *v.* Hodge, 51 Oh. St. 236.

[2] See *ante*, note 5, p. 37.

[3] Great Western Tel. Co. *v.* Purdy, 162 U. S. 329; Platt *v.* Wilmot, 193 U. S. 602.

[4] See *ante*, note 6, p. 37.

[5] Nimick *v.* Mingo Iron Works Co., 25 W. Va. 184; May *v.* Black, 77 Wis. 101; Finney *v.* Guy, 106 Wis. 256.

[6] Pollard *v.* Bailey, 20 Wall. 520.

[7] Fourth National Bank *v.* Francklyn, 120 U. S. 747; Middletown Bank *v.* Ry., 197 U. S. 394; Erickson *v.* Nesmith, 4 Allen (Mass.) 233; Clark *v.* Knowles, 187 Mass. 35.

[8] See *ante*, note 1, p. 38.

[9] Hale *v.* Allinson, 188 U. S. 56; Finney *v.* Guy, 189 U. S. 335; Bernheimer *v.* Converse, 206 U. S. 516.

familiar rule that a Chancery receiver may not sue outside the State in which he is appointed.[1] The reason is plain. A Chancery receiver is merely the arm of the court of equity which appoints him. That court draws its powers from the State which establishes it. It has no power to act outside that State.[2] Clearly it cannot delegate powers which it does not itself possess. A Chancery receiver, therefore, cannot *of right* sue in another State. It is true that a few federal cases have permitted such a receiver to sue on the ground of comity,[3] but this position has since been repudiated by the Supreme Court.[4] On the other hand, a receiver who is clothed with the legal interest in a cause of action may sue in other States.[5] In such a case he sues, not as receiver, but as title holder. His receivership is the means by which he is clothed with the title, but it clothes him with no extra-territorial power, save that which springs from such title. Suit by a receiver, therefore, illustrates both branches of the rule. The extent of his interest is determined by the law of the State of appointment;[6] the question whether that interest is sufficient to sustain suit by him in another State is governed by the law of the forum.[7]

It now becomes necessary to consider certain characteristics of the three general systems of statutory liability, in order to determine how far each system is enforceable outside the State of creation. These systems differ mainly in the nature of the *remedy* provided by the creating State. *Substantively* all are similar in that each is secondary and may not be resorted to until the inability of the corporation to meet its debts is sufficiently established. But, as will be shown, the nature and extent of the remedy conferred by the enacting State may limit enforcement of this statutory right in other States. These three

[1] Booth *v.* Clark, 17 How. (U. S.) 322.

[2] Thus a court of equity, even though it has personal jurisdiction of the defendant, will seldom, if ever, order him to take affirmative action in another State. Carteret *v.* Petty, 2 Swanst. 323; Watkins *v.* Holman, 16 Pet. (U. S.) 25.

[3] Hale *v.* Hardon, 95 Fed. 747; Hale *v.* Tyler, 104 Fed. 757; Hale *v.* Hilliker, 109 Fed. 273.

[4] Hale *v.* Allinson, 188 U. S. 56; Finney *v.* Guy, 189 U. S. 335; Great Western Mining Co. *v.* Harris, 198 U. S. 561.

[5] Relfe *v.* Rundle, 103 U. S. 222; Howarth *v.* Lombard, 175 Mass. 570; Bernheimer *v.* Converse, 206 U. S. 516. The same is true of an assignee. Hawkins *v.* Glenn, 131 U. S. 319; Glenn *v.* Liggett, 135 U. S. 533.

[6] Hale *v.* Allinson, 188 U. S. 56; Bernheimer *v.* Converse, 206 U. S. 516.

[7] See cases cited *ante*, note 6. The test laid down by a recent decision is: Has the receiver such an interest as will support suit in the State of appointment? Hale *v.* Allinson, *supra*.

systems, therefore, will be classified according to the remedy coupled thereto by the enacting State.

The crudest system permitted any creditor to proceed against any stockholder at common law, after recovering a judgment against the corporation upon which execution had been returned unsatisfied.[1] This worked unsatisfactorily. It apportioned the burden unequally between large and small stockholders. The large stockholders were sued, because enough could be recovered from them to make the litigation pay, while for the opposite reason the small stockholders were often not sued at all. The creditor, in a word, could thus select, according to caprice or whim, the person or persons who must bear this corporate burden. On the other hand, while this liability was held to be enforceable in some States,[2] the courts in other States declined to enforce it for reasons of public policy.[3] It was urged against enforcement that the liability was statutory; that the creating statute was without force outside the enacting State, and that, therefore, no action could be brought thereon outside the State which created the right. But to this argument it was replied that, when the cause of action had accrued, the creditor could sue at law as if for a breach of contract. This view and the consentual elements of the liability led the United States Supreme Court to hold the statutory right enforceable outside the State of creation.[4]

The next system effected a more equitable distribution of the burden, although it did not do complete justice. The element of caprice was eliminated by defining a special statutory remedy. As in the system just discussed, the inability of the corporation to meet its debts had first to be established, but, this condition precedent having been performed, the statutory remedy resembled a gigantic bill of peace. All the creditors were allowed to file a bill in equity, within a certain time, against the corporation, and all the alleged stockholders who could be reached within the jurisdiction.[5] In this action the various conflicting rights and equities were adjusted. In the first place, the

[1] Wilson *v.* Seligman, 144 U. S. 41 (Mo.); Whitman *v.* Oxford Nat. Bank, 176 U. S. 559 (Kan.).

[2] Whitman *v.* Oxford Nat. Bank, 176 U. S. 559.

[3] See *ante*, note 5, p. 39.

[4] Whitman *v.* Oxford Nat. Bank, 176 U. S. 559; Hancock Nat. Bank *v.* Farnum, 176 U. S. 640.

[5] Middletown Bank *v.* Ry., 197 U. S. 394 (Ohio); Hale *v.* Allinson, 188 U. S. 56 (Minn.).

assets of the corporation were applied on its indebtedness. Then the question whether each individual defendant was a stockholder, and, if so, to what extent, was determined as against him. Thereafter the unpaid balance of the corporate indebtedness was ascertained, and apportioned among the various defendant stockholders, in proportion to their holdings. If any stockholder was insolvent and unable to meet his proportion, his transferors were called in to meet those corporate debts which existed or were contracted at the time the transferor was a stockholder.[1] The final result was a crop of personal judgments which were collected for division among the corporate creditors.

Nevertheless this method of enforcing the liability had a serious defect. The statutory remedy in equity was held to be exclusive.[2] In the State of creation no other was applicable. But stockholders in other States were, as a matter of common justice, entitled to similar protection. To permit the creditor to sue foreign stockholders at law subjected them to a heavier burden than rested upon domestic stockholders. The remedy therefore was held to be coupled to the right both at home and abroad.[3] But the statute defining the remedy was not in force outside the enacting State. That remedy, therefore, could not be given outside the State of creation. Moreover, since the remedy was exclusive, no other could be given. The result was that the right could not be enforced outside the State of creation.[3] Under this system, therefore, the whole burden was cast on domestic stockholders.

Thus in avoiding one difficulty this second form of remedy fell into another. The first system was enforceable both within and without the enacting State. But both within and without the enacting State the stockholders were subject to the creditor's caprice. He selected at will the persons to bear the corporate burden. This second system divided the burden proportionally among all domestic stockholders alike. All who could be found were necessary parties to the bill of peace. The caprice of the creditor was therefore eliminated. But in reaching this result mobility was sacrificed. The right ceased to be enforceable outside the State of creation. The problem, therefore,

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[1] As an example see Brown *v.* Hitchcock, 36 Oh. St. 667; Wheeler *v.* Faurot, 37 Oh. St. 26; Harpold *v.* Strobart, 46 Oh. St. 397; Poston *v.* Hull, 75 Oh. St. 502.

[2] Pollard *v.* Bailey, 20 Wall. 520.

[3] Fourth Nat. Bank *v.* Francklyn, 120 U. S. 747; Middletown Bank *v.* Ry., 197 U. S. 394; Erickson *v.* Nesmith, 4 Allen (Mass.) 233; Clark *v.* Knowles, 187 Mass. 35.

was to provide a remedy which would be enforceable both within and without the State, and which would still apportion the burden fairly.

To meet this need the assessment system was evolved, following the model provided by the National Banking Act.[1] By the assessment system the equitable action of the second system above described is split into two parts, one in equity against the corporation, the other at law against the stockholders individually. As in the two systems already discussed, the inability of the corporation to meet its debts must be shown as a condition precedent to this relief; for instance, by return of "no goods" upon an execution issued on a judgment against the corporation. Thereafter action is brought against the *corporation* to obtain a receiver. In this action the excess of corporate debts over corporate assets is established and the amount of capital stock outstanding is determined. It then becomes a matter of simple arithmetic to ascertain what must be collected from the holder of each share of stock.

A concrete example will make this clear. Suppose that in this action against the *corporation*, the corporate debts are found to be one million; the corporate assets, five hundred thousand; and the capital stock issued, one million. The difference between the debts and the assets is five hundred thousand dollars of debt. This is precisely one-half the outstanding capital stock. The assessment therefore is fifty per cent, or fifty dollars on each share of one hundred dollars, by whomsoever such share may be held.

But this assessment proceeding is directed against the corporation alone. Jurisdiction of the corporation is sufficient to sustain it.[2] Indeed a recent case has held that no notice need be given to the stockholders.[3] This is entirely logical. The stockholders are not personally before the court. No personal judgment is rendered against them.[4] Indeed no person is adjudged to be a stockholder,[4] though the total amount of stock outstanding is ascertained as one of the corporate liabilities. Other personal defences are left open. For example, one

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[1] For examples under the National Banking Act, see Kennedy *v.* Gibson, 8 Wall. 498; Casey *v.* Galli, 94 U. S. 673.

[2] Bernheimer *v.* Converse, 206 U. S. 516; Howarth *v.* Lombard, 175 Mass. 570. See also Hawkins *v.* Glenn, 131 U. S. 319.

[3] Goss *v.* Carter, 156 Fed. 746.

[4] Bernheimer *v.* Converse, 206 U. S. 516, 532; Howarth *v.* Lombard, 175 Mass. 570, 579.

sued on the assessment may set up that section of the statute of limitations of the forum, which is applicable to ordinary actions of contract.[1] In other words the burden which each share of stock must bear is ascertained, though the persons who must bear that burden are not determined. In this way equality of burden is obtained without violating any personal right. The question of personal liability is left to be settled in the separate actions at law against the individuals alleged to be stockholders.

Yet the assessment proceeding is a judicial proceeding. The necessity for and the extent of the assessment are *res adjudicatae* against the corporation. The assessment binds, in their *corporate*, though not their *personal* capacity, all persons who are in truth stockholders. This result follows from the nature of a corporation. The law has conferred on the associates a common legal entity. They may sue and be sued, in respect of *corporate* matters, in the corporate name. Just as the stockholders need not join in an action by the corporation, so they need not be joined in an action against the corporation. They are to this extent represented by the corporate entity. Thus a valid judgment against the corporation forecloses, as against stockholders, everything which is properly adjudged against the corporation. It follows that the judgment against the corporation is not open to collateral attack by a stockholder upon the ground that he was not joined in the action.[2]

A further proceeding is therefore necessary to render the assessment effective as a personal liability. The assessment fixes the *rate* of liability, but the *persons* who are liable have yet to be judicially ascertained. This is done in single actions at law brought against each alleged stockholder respectively. In each of these actions the plaintiff must establish that the defendant is in truth a stockholder, and show the number of shares held by him. The defendant, as has been shown, may bring forward any personal defence, though he may not attack either the necessity for or the extent of the assessment. In other words the assessment represents the measure of damages which will be applied if personal liability as a stockholder is established.

The assessment method therefore combines the advantages of both the former systems. By the assessment proceeding proper, a uniform

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[1] Ramsden *v.* Knowles, 151 Fed. 718, affirmed in 151 Fed. 721; Great Western Tel. Co. *v.* Purdy, 162 U. S. 329.

[2] Howarth *v.* Lombard, 175 Mass. 570; Bernheimer *v.* Converse, 206 U. S. 516.

rate of burden per share is established for all stockholders, large and small. This proceeding is necessarily local and can be enforced only where personal jurisdiction of the corporation may be had. But such jurisdiction may always be obtained in the State where the corporation is created. This local feature therefore presents no difficulty. On the other hand, the personal liability of each individual is fixed in a subsequent action at law. This so far resembles a common law action that it may be brought outside the State which creates the liability, though the right is partly of statutory origin.[1] The local nature of the "bill of peace" method is thus confined to the assessment proceeding proper, and no longer prevents enforcement of the liability outside the State of creation. The assessment method, therefore, combines proportionate uniformity of burden with general enforceability against all who ought to bear the burden.

The three systems, therefore, may be recognized by their fruits. In the first, a crop of single actions at law sprang up as soon as the inability of the corporation to meet its debts was properly shown. In the "bill of peace" system a single action in equity, to which corporation, creditors, and stockholders were all parties, replaced the group of actions at law in system one. In this single action in equity *personal judgments* were rendered against all persons who were made parties and adjudged to be stockholders. This sharply differentiates it from the assessment proceeding proper in which the rate of liability is determined, but the persons to be held liable are not ascertained. The assessment method, therefore, differs from system one in that the ascertainment of this rate of liability is the condition precedent to the accrual of the separate personal rights of action against the stockholders. It differs from the "bill of peace" system in that a judgment against the defendant in the separate personal action at law is the condition precedent to personal liability. The first and third systems, therefore, are enforceable outside the State imposing the liability, the second is not.

In this connection, however, an important distinction must be noted. The nature of the remedy may clog enforcement of the liability without contractually limiting the right. This point was directly presented and decided in Bernheimer *v.* Converse, 206 U. S. 516. In that case certain non-residents had become stockholders in a Minnesota corporation at a time when the statute made an equitable action similar

[1] Bernheimer *v.* Converse, 206 U. S. 516; Howarth *v.* Lombard, 175 Mass. 570.

to a bill of peace, the proper method of enforcing the stockholders' liability. Subsequently the legislature repealed this remedy and substituted the assessment method in its place. A remedy enforceable against these non-residents was thus substituted for one which was unenforceable against them. The corporation was wound up; the amount of assessment determined; and the defendants were sued under the new statute. They contended that the statute was unconstitutional in that it enlarged their liability. The Supreme Court rejected this view and held that the extent of the liability was not diminished by imposing a remedy which confined enforcement to the State of creation; that the legislature might properly substitute an effectual for an ineffectual remedy, and that therefore the statute was not invalid as impairing the obligation of the stockholders' contracts. This case emphasizes the distinction between the "assessment" and the "bill of peace" methods of enforcement. It also shows that, where the remedy alone shackles the right to the State of creation, the legislature may strike off the clog and make the liability enforceable, both within and without the State.

Thus far, so far as the writer knows, there has been no attempt in this country to devise a single proceeding which will foreclose the personal defences of absentees. As has been shown, the "bill of peace" method results in personal judgments only against those who were personally before the court, while the assessment method does not determine any individual liability in the assessment proceeding. It has been long established that service by publication will not give personal jurisdiction.[1] On the other hand, personal jurisdiction may be conferred by consent. Thus voluntary appearance before the court, either as plaintiff,[2] or as defendant,[3] will confer jurisdiction without personal service. Agreement between the parties may confer personal jurisdiction.[4] Thus a foreign corporation may consent to be sued within the State as the price of permission to do business therein.[5] Moreover, if a statute exacts such consent as a condition precedent to doing business, doing business in the State will amount to consent.[5] A stockholder in a foreign corporation may in like manner consent to

[1] Pennoyer *v.* Neff, 95 U. S. 714; Wilson *v.* Seligman, 144 U. S. 41. See also Hale *v.* Allinson, 188 U. S. 56.

[2] Ricardo *v.* Garcias, 12 Cl. & Fin. 367; Fitzsimmons *v.* Johnson, 90 Tenn. 416.

[3] Voinet *v.* Barrett, 55 L. J. Q. B. 39; Hilton *v.* Guyot, 159 U. S. 113.

[4] Feyericks *v.* Hubbard, 18 T. L. R. 381; Dicey, Conf. of Laws, 1 ed., 369.

[5] St. Clair *v.* Cox, 106 U. S. 350.

be sued in respect of corporate matters in the courts of the State which creates the corporation.[1] Thus, if, in accordance with French law, the stockholder designates some French person on whom service may be made, such service is sufficient.[2] And where such consent is expressly made a condition of membership in the corporation, one who takes stock therein will be held to have assented, even though he was ignorant of the provision.[3] And if a statute designates the chairman of a joint stock company as the representative of its members for purposes of suit, a judgment obtained against such chairman binds all the members of the company personally, even though they, or any of them, were ignorant of the statute at the time of joining the company, and were not personally served in the action.[4] It seems, therefore, and these authorities are all that the writer has been able to find, that if a stockholder assent to be sued, without personal service, in the courts of the State which creates the corporation, such assent will confer personal jurisdiction.

On the other hand, such assent is not lightly to be inferred.[5] In every one of the stockholder cases cited above there was some *express* provision of the statute enacting such assent as an incident of membership in the corporation. Nothing less should suffice. Even the *express* provision in respect of the superadded liability imposes great hardships. Corporate stock is sold far and wide. The statutes of the State which creates the corporation are seldom accessible to the purchaser. Frequently even skilled legal examination is not sufficient to unravel all their meaning. But the *express* provision in respect of liability at least gives notice that *some* liability is assumed even though its nature and extent may not be plain. Nothing less should deprive a man of his ordinary right to personal service. To render service by publication sufficient the statutory provision should be prominent and explicit. Indeed common fairness would dictate placing both this and the liability provision upon the certificate. Perhaps

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[1] Copin *v.* Adamson, L. R. 9 Exch. 345.

[2] Vallée *v.* Dumergue, 4 Exch. 290.

[3] Copin *v.* Adamson, L. R. 9 Exch. 345, but see dissenting opinion by Kelly, C. B. The decision was affirmed in 1 Ex. D. 17.

[4] Bank of Australasia *v.* Nias, 16 Q. B. 717; Kelsall *v.* Marshall, 1 C. B. N. S. 241; Bank of Australasia *v.* Harding, 9 C. B. 661; and see generally 20 HARV. L. REV. 323.

[5] Emanuel *v.* Symon, L. R. 1908, 1 K. B. 302; reversing Emanuel *v.* Symon, L. R. 1907, 1 K. B. 235. See also Hall *v.* Lanning, 91 U. S. 160; D'Arcy *v.* Ketchum, 11 How. 165.

this feeling leads to the singular dearth of authority in this country. The writer has discovered no American case which directly passes on this question of assent to jurisdiction by a stockholder. It seems to be assumed as a matter of course that a mere provision for service upon non-resident stockholders by publication, without more, will not draw after it an assent that such service shall be sufficient.[1] While, therefore, there is little direct authority, it seems that neither membership in the corporation nor a statutory provision for service by publication, without more, will confer personal jurisdiction of non-resident stockholders. Some more explicit requirement in respect of such assent seems necessary even to raise the question.

It may be indeed that to require non-residents, as distinguished from residents, to assent to such service would be unconstitutional. This in the last analysis would depend on the question whether the right to hold stock in a domestic corporation upon the same terms as domestic stockholders is a privilege or immunity of citizens of the several States. The question is remote at present and has no place in this article. But it may become serious in the future.

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[1] Wilson *v.* Seligman, 144 U. S. 41; Hale *v.* Allinson, 188 U. S. 56, 80.